

**VARGAS ATTACHMENT:**

**ANSWERS TO QUESTION 6, GROUNDS FOR RELIEF  
(JUDICIAL COUNCIL FORM MC-275)**

**QUESTION 6:** To answer Question 6, write “Please see attached” in the space for that question on the MC-275 form if it is not already printed there.

**FILL OUT THE ATTACHMENT:** Fill in the blanks that apply to you in section (a), **Supporting Facts**, below.

**REVIEW:** Read everything very carefully, both the parts already printed and the information you added. Make sure it is all correct and applies to your case. Cross out or change anything that is not accurate. This Attachment is filed under penalty of perjury.

**SIGN, DATE, ATTACH:** When you are done with the Attachment, sign and date the “**Verification**” on the last page. Add this Attachment (and any additional sheets you needed) to your MC-275 form.

**COMPLETE AND CHECK MC-275 FORM:** If you have not completed and signed your form MC-275, do that next. Follow the “Instructions for a *Vargas* Habeas Corpus Petition” handout. Check everything again when done.

**Question 6: GROUNDS FOR RELIEF**

**Ground 1:** This petition alleges the right to be resentenced under *People v. Vargas* (2014) 59 Cal.4th 635 [hereafter *Vargas*]. I am serving a three-strike term and two of my prior strike convictions are based on the same criminal act. This petition asks that I be resentenced in conformity with *Vargas*.

**(a) Supporting facts:**

**Priors:** The crime for which I was convicted and the three-strike sentence I am serving are shown in question 3 of my MC-275 form. My first strike prior was for the crime of \_\_\_\_\_ (*first strike prior crime*) which was committed on \_\_\_\_\_ (*month/day/year*). My second strike prior was for the crime of \_\_\_\_\_ (*second strike prior crime*) which was also committed on \_\_\_\_\_

\_\_\_\_\_ (month/day/year). Two of my prior convictions were based on the same criminal act, which was \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Be as detailed as possible when describing the criminal act that resulted in two strikes. Describe how the acts occurred at the same time and against the same victim, if applicable.)

I am currently in custody at \_\_\_\_\_ (prison name and address).

I enclose a copy of the transcript from my sentencing.

If your sentencing transcript is available, check this box and enclose a copy of it with the petition.

**(b) Supporting authority:**

***People v. Vargas* (2014) 59 Cal.4th 635**

In *Vargas* the California Supreme Court held that when a trial court is considering sentencing a defendant under the Three Strikes law and there are two prior strike convictions based on the same act, the trial court is *required* to dismiss one of them. (*People v. Vargas, supra*, 59 Cal.4th at p. 645, 649.) The court disapproved *People v. Scott* (2009) 179 Cal.App.4th 920, 931, which held the fact two priors arose from the same act is only one consideration and not a reason categorically to dismiss a strike. (*Id.* at pp. 644-646.)

In *Vargas* the defendant was convicted of a strike offense and the trial court sustained two prior strike allegations based on two 1999 convictions, robbery and

carjacking. The two priors were based on the defendant's commission of the same act, forcibly taking the victim's car. After some intermediate appellate proceedings, the trial court denied the defendant's motion to dismiss one of the 1999 prior convictions, and sentenced the defendant to a three-strike term of 25 years to life. After the Court of Appeal found no abuse of discretion, the Supreme Court concluded "this is one of the extraordinary cases (*People v. Carmony* [(2004) 33 Cal.4th 367,] 378) in which the nature and circumstances of defendant's prior strike convictions demonstrate the trial court was required to dismiss one of them because failure to do so would be inconsistent with the spirit of the Three Strikes law." (*People v. Vargas, supra*, 59 Cal.4th at p. 649.)

The Supreme Court found that its reasoning was consistent with the hypothetical scenario considered by the court in footnote 8<sup>1</sup> in *People v. Benson* (1998) 18 Cal.4th 24 and later echoed by the court in *People v. Sanchez* (2001) 24 Cal.4th 983. (*People v. Vargas, supra*, 59 Cal.4th at p. 645.) In both *Benson* and *Sanchez*, the court recognized "that where two prior crimes are based on the same act, such a close connection might require a sentencing court to strike one of them pursuant to its authority under section 1385" and a failure to dismiss would be inconsistent with the intent underlying the legislative and initiative versions of the Three Strikes law. (*Vargas*, at pp. 643, citing

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<sup>1</sup>"Because the proper exercise of a trial court's discretion under section 1385 necessarily relates to the circumstances of a particular defendant's current and past criminal conduct, we need not and do not determine whether there are some circumstances in which two prior felony convictions are so closely connected — for example, when multiple convictions arise out of a single act by the defendant as distinguished from multiple acts committed in an indivisible course of conduct — that a trial court would abuse its discretion under section 1385 if it failed to strike one of the priors." (*Benson, supra*, 18 Cal.4th at p. 36, footnote 8.)

*Sanchez, supra*, at p. 933, 645, referencing *People v. Garcia* (2001) 25 Cal.4th 744, 756-757.)

The court reasoned that the voting public would reasonably have understood the “Three Strikes” law within the context of the traditional baseball metaphor, “three strikes and you’re out.” (*People v. Vargas, supra*, 59 Cal.4th at p. 646.) This meant that the public “also would have understood that no one can be called for two strikes on just one swing.” (*Ibid.*) Therefore, the court found that the trial court was required to dismiss one of the strikes because treating the 1999 robbery and carjacking convictions as separate strikes based on the same act would conflict with the electorate (Pen. Code, § 1170.12) and legislative intent (Pen. Code, § 667, subds. (b)–(i)). (*Id.* at pp. 638-639, 646.)

### **Retroactivity**

*Vargas* does not create new law but rather clarifies the intent behind the Three Strikes law as it relates to a small sub-set of defendants, those who have two prior strike convictions that resulted from the same criminal act. It represents a substantive rule of law, because it alters the definition of conduct that comes within the Three Strikes law. In order to put into effect the policy intended at the inception of the Three Strikes law, *Vargas* should be fully retroactive. (See *Schriro v. Summerlin* (2004) 542 U.S. 348, 351-352, fn. 4; *Bousley v. United States* (1998) 523 U.S. 614 [anti-retroactivity principle established in *Teague v. Lane* (1989) 489 U.S. 288 applies only to procedural rules]; *People v. Gonzales* (2011) 51 Cal.4th 894, 927 [*Verdin v. Superior Court* (2008) 43 Cal.4th 1096 did not declare a new rule and therefore could be applied retroactively];

*Woosley v. State of California* (1992) 3 Cal.4th 758, 793-795 [court's holding on the Legislature's intent behind filing of class claims should be applied retroactively to accomplish original meaning]; *People v. Mutch* (1971) 4 Cal.3d 389, 394-396 [*People v. Daniels* (1969) 71 Cal.2d 1119 confirmed a substantive definition of a crime and entitles defendants, whose conviction became final before the decision was issued, to post conviction relief]; *In re Hansen* (2014) 227 Cal.App.4th 906, 916-917 [*People v. Sara Chun* (2009) 45 Cal.4th 1172 should be applied retroactively to convictions that are final on appeal].)

**(c) Request for resentencing and appointment of counsel**

Because of the nature and circumstances of my prior strikes, I fall outside the scope of the Three Strikes law as defined by *Vargas*. I request to be resentenced in conformity to *Vargas* because my two strike priors are the result of just one criminal act.

I also request that counsel be appointed to represent me at proceedings ordered by this court. (Cal. Rules of Court, rules 4.551(c)(2), 8.385(f).) I am indigent and unable to hire my own attorney.

**VERIFICATION OF ATTACHMENT**

**DECLARATION: I declare under penalty of perjury under the laws of California that the foregoing is true and correct.**

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Petitioner*